IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.622 to 624 of 2007

Commissioner of Income-tax-II,
Chennai. ..Appellant in
all the T.C.(A)s.

Vs.

B.Jayalakshmi ..Respondent in
all the T.C.(A)s.

Appeals under Section 260A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "A" Bench, Chennai in I.T.A. Nos.1508, 1509 & 1510/Mds/2003 dated 12.07.2004 for the assessment years 1991-92, 199293 and 1993-94, respectively.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

These appeals are filed by the Revenue against the order of the Income-tax Appellate Tribunal, "A" Bench, Chennai in I.T.A. Nos.1508, 1509 & 1510/Mds/2003 dated 12.07.2004 raising the following common substantial questions of law:-

"i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the income of the minor daughters cannot be clubbed with that of their mother, the assessee?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the failure of the assessing officer to

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enquire further into the veracity of the affidavits produced by the assessee would lead to the presumption that they are genuine?

2. The facts leading to the above substantial questions of law are as under:

The assessee is an individual. The assessee is the wife of a Customs Officer and is engaged in money lending business and also derives interest income from banks. The relevant assessment years are 1991-92, 1992-93 and 1993-94 and the corresponding accounting years ended on 31.03.1991, 31.03.1992 and 31.03.1993, respectively. The assessee filed Return showing income from money lending as well as interest from bank deposits. The assessments were processed under Section 143(3) of the Income-tax Act ("Act" in short). There was a raid on 19.2.1997 on the assessee's residential premises and her lockers at Indian Bank and Canara Bank were searched and cash amounts were seized. Hence, notice was issued under Section 148 of the Act for the above three assessment years, i.e., 1991-92, 1992-93 and 1993-94 and Sworn Statement was also recorded. The Assessing Officer completed the assessment and made additions being the income of the assessee's minor daughters clubbed in her hands under Section 64(1)(iv) of the Act. Aggrieved by the orders, the assessee filed appeals to the Commissioner of Income-tax (Appeals). The C.I.T.(A) allowed the appeals. Aggrieved, the Revenue filed appeals to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeals and confirmed the orders of the C.I.T.(A). Hence the present tax cases by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the minor children had no independent source of income to form the corpus for the money lending activities and bank deposits. Hence, the Assessing Officer is justified in clubbing the income of the assessee's minor daughters to the income of the assessee.

4. Heard the counsel. The Tribunal considered the scope of Section 64(1)(iv) of the Act and confirmed the orders of the C.I.T.(A), who had considered the matter in detail. The reasoning of the Tribunal in paragraph 3 of the order reads as under:-

"3. The first issue in assessment year 1991-92 relates to the addition of Rs.89,436/- representing income of minor daughters clubbed in the hands of the assessee u/s.64(1)(iv) of the Act. This addition was deleted by the CIT(A). The learned CIT(A) while dealing with this issue had noted that certain returns of income in the names of the minor daughters were filed for the assessment year 1991-92 on 16-3-95. The Assessing

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Officer did not take any action on those returns filed beyond the time limit stipulated u/s.139 of the Act. In the returns filed it is seen that the minor daughters derived income from bank deposits and money lent as loans/advances to several persons. There was no evidence in the returns that the income had arisen from assets transferred to them by the assessee either for inadequate or no consideration so as to attract the provisions of sec.64(1)(iv). The learned CIT(A) on this issue had observed as under:-

> "7. In the case of CIT v. M.S.S. Rajan (252 ITR 126), the Hon'ble Madras High Court held that the scope of section 64 was limited to incomes which were directly or indirectly received from transfer of assets or the ones substituted for the transferred assets and did not include income received from savings effected from the income realised from the transferred assets. The High Court, therefore, held that this special provision u/s.64 which was meant to prevent the assessees from avoiding the payment of tax on income under their control by divesting themselves of the title to the asset in favour of their spouse or minor children for no consideration or inadequate consideration, could not be stretched to include the second generation income, namely, income from the invested income from the asset that had been transferred or substituted. It is, however, seen in the case of the appellant that the Assessing Officer has not shown or established that any asset had been transferred by the appellant to her minor children or substituted by bank deposits and loans/advances which were the source of income for them, if any such transfer had taken place. The Assessing Officer, therefore, does not have any basis to club the income totalling to Rs.89,436/- shown in the name of minor daughters in the hands of the appellant. The same is, therefore, deleted.""

The categorical finding given by both the authorities is that the Assessing Officer had not brought any material on record even to suggest that there was any asset transferred to them by the assessee and the additions are made on mere surmises and conjectures. Concurrent finding has been given by the authorities that no evidence on record that the income had arisen from assets transferred to the children of the assessee, by the assessee, either for inadequate or no consideration so as to

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attract the provisions of sec.64(1)(iv) of the Act. Recently, the Supreme Court in the case of Commissioner of Income-tax Vs. P.Mohanakala (291 ITR 278), held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

5. In view of the foregoing reasons, no substantial questions of law arise for consideration of this Court and accordingly, the tax cases are dismissed. Consequently, M.P.No.1 of 2007 in T.C.(A) No.623 of 2007 and M.P.No.1 of 2007 in T.C.(A) No.624 of 2007 are closed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, 'A' Bench,
   Madras.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) IV,
   121, Mahatma Gandhi Road, Chennai-600 034.

4. The Assistant Commissioner of Income-tax,
   Salary Circle II, Chennai-34.

5. The Assistant Registrar,
   Income Tax Appellate Tribunal
   Rajaji Bhavan,
   Basant Nagar, Chennai.90. (5 Copies)

+ 1 cc to Mr. Pushya Sitaraman, SSC (IT) SR No. 34588

RA(CO)
SR/22.6.2007

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